

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

DEC 26 2019

David J. Bradley, Clerk of Court

JOHN SAIN, et al.,	§	
	§	CIVIL ACTION NO.
Plaintiffs,	§	4:18-cv-04412
v.	§	
	§	
BRYAN COLLIER, et al.,	§	
	§	
Defendants.	§	

18th AFFIDAVIT OF JOHN SAIN TDCJ #01373168

- 1) This affidavit is provided to refute the allegations detailed in the Court's Order Granting in part and denying in part, Plaintiffs Motion For Extension of Time, Doc. 150.
- 2) Plaintiff Jerry Smith was not included on the signature page due to consideration of all Plaintiffs that he was not a active Plaintiff. I and the others based this belief on the Court's Memorandum Opinion and Order, Doc. 120, p 25, Conclusion and Order, para., 3, "...the claims of Plaintiff Jerry Smith are DISMISSED for failure to exhaust administrative remedies." Due to this belief Plaintiffs, at the time of their relocation to Pack Unit on October 30, 2019, could not understand the relocation of Jerry Smith as an active Plaintiff. This belief of his dismissal also accounts for his non-inclusion in Plaintiffs IFP submission to both this Court and the USCA.

- 3) Plaintiffs concluded Mr. Smith's docket listing without a termination notice was just another Clerk's error as Mr. Capuchino's name had been added post Doc. 120.
- 4) When a motion is quickly needed for submission and time is lacking, Plaintiffs use templates/blank forms to save typist time and cost from typing repetitive portions of a paper. As such, Plaintiffs have "blank forms" for the header page, the back end certification pages, and the signature page (without signatures). These preprinted pages are provided from our Copy Service. I and the other Plaintiffs have no access to Xerox or copy machines in TDCJ. These forms are utilized when I must generate and file a document from my unit of residence. This requires us to type and generate at least three exact copies for filing and the parties. See attached header page, certification pages, signature page, and affidavit, as samples of Plaintiffs "fill in the blank" forms utilized; (pages 7-12).
- 5) I utilized these "fill in the blank" forms in the submission of our Request For Extension of Time, Doc. 149.
- 6) As we recently relocated to Pack, new, current address signature pages had not arrived from our Copy Service. As such, I elected to utilize the existing forms with a note/disclaimer typed at the bottom that due to our recent relocation, the following addresses now applies to the above

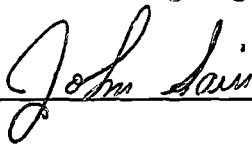
Plaintiffs. This was typed on the signature pages generated for this document, here on the Pack Unit and original signatures provided to the Court and all parties. No Xerox or copy machines were available nor utilized for the submission of Doc. 149.

- 7) This Extension Request, Doc. 149, was necessitated by the Defendants relocation of the Plaintiffs which totally disrupted, hindered, and stopped contact and conference between the Plaintiffs and their inmate legal assistants necessary to timely respond to documents. Defendants solution has been to allow Sain, Cummings and Wilson to correspond via USPS Mail. To date the Sain to Cummings to Sain test envelope required 21 days to complete the cycle. The Sain to Wilson to Sain test envelope began on the same day as the Cummings envelope, yet 10 additional days have passed without it returning to Sain. Additionally, the contents of these envelopes are subject to the Defendants full reading and copying their entire contents.
- 8) I and the other Plaintiffs have fully adhered to the Court's Order, Doc. 7, concerning the necessity for actual signatures of all Pro Se Plaintiffs, on all submissions. The Plaintiffs have not varied from this requirement on any of their submissions to the Court.

- 9) I nor the other Plaintiffs have utilized signatures provided on previous submissions for any submission to the Court for those documents generated and submitted from their units.
- 10) My Copy Service have always been provided current actual signature pages for each submission they process to the Clerk.
- 11) I and the other Plaintiffs have found that the easiest method to assure that their actual signatures are affixed to the page, is to turn the page over and feel the indentations each individuals pen strokes made while compressing the paper.
- 12) I hope this and the attachments will remove the negative connotation the Court has alleged upon the Plaintiffs and I as if we were submitting fraudulent paperwork. I and the other Plaintiffs have done nothing of the kind and wish this could reverse the Court's negative ruling concerning our Request For Extension of Time on all counts.

I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this declaration are within my personal knowledge and are true and correct. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Signature



Date:

21 DEC 2019

CERTIFICATE OF CONFERENCE

Whereby their signatures below, Plaintiffs do hereby certify/declare that a conference is not possible because Plaintiffs are incarcerated in Texas Department of Criminal Justice, Institutional Division, and are proceeding Pro Se in this cause. Plaintiffs will not speculate on whether the Defendants oppose this motion.

CERTIFICATE OF SERVICE

Whereby their signatures below, Plaintiffs do hereby certify/declare that true and correct copies of the foregoing document was forwarded via U.S. First Class Mail, postage pre-paid, to the following parties:

- a. Bryan Collier
TDCJ Executive Director
Texas Department of Criminal Justice
- b. James McKee
Warden
O.L Luther Unit (P2)
- c. Texas Department of Criminal Justice
c/o Bryan Collier
TDCJ Executive Director

Service was perfected to the above Defendants through their Attorneys of Record for Service:

Todd Disher

Attorney In Charge
Office of Attorney General of Texas
209 W 14th, 8th Floor
Austin, TX 78701

Leah Jean O'Leary

Office of the Attorney General
Law Enforcement Defense Division
P.O. Box 12548 Capital Station
Austin, TX 78711-2548

CERTIFICATE OF MAILING

Whereby their signatures below, Plaintiffs do hereby certify/declare that the foregoing document was delivered to the United States Post Office for processing (U.S. First Class postage, pre-paid).

Pursuant to Fed. R. App. P. Rule 25 (a)(2)(A)(iii), "Mailbox Rule," Pro se documents filed at the time they are placed in the institutional mailing system for processing.

INMATE DECLARATION

We, the Plaintiffs listed below, being over 18 years of age, of sound mind, capable of making this declaration due to the facts that we: suffer from and/or experience(d) one or more of the conditions described; attended consultations with qualified medical and other professionals; having been trained by medical personnel to recognize and treat complications due to illness/heat/cold; having studied materials listed under Fed. R. Civ. P. Rule 902; through our personal observations; and due to belief and empirical knowledge that the facts stated above; pursuant to 28 U.S.C. § 1746, do hereby declare under penalty of perjury that the foregoing is true and correct from personal knowledge.

Executed on DECEMBER 21, 2019

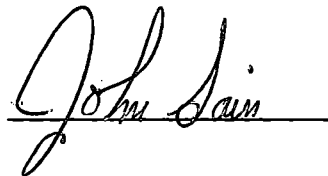
JOHN SAIN, Pro Se

TDCJ ID#01373168

Pack Unit

2400 Wallace Pack Rd.

Navasota, TX 77868-4567

A handwritten signature in black ink, appearing to read "John Sain", is written over a horizontal line.

Example 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN SAIN, et al.,	§	
	§	CIVIL ACTION NO.
Plaintiffs,	§	4:18-cv-04412
v.	§	
	§	
BRYAN COLLIER, et al.,	§	
	§	
Defendants.	§	

Example 2-1

CERTIFICATE OF CONFERENCE

Whereby their signatures below, Plaintiffs do hereby certify/declare that a conference is not possible because Plaintiffs are incarcerated in Texas Department of Criminal Justice, Institutional Division, and are proceeding Pro Se in this cause. Plaintiffs will not speculate on whether the Defendants oppose this motion.

CERTIFICATE OF SERVICE

Whereby their signatures below, Plaintiffs do hereby certify/declare that true and correct copies of the foregoing document was forwarded via U.S. First Class Mail, postage pre-paid, to the following parties:

- a. Bryan Collier
TDCJ Executive Director
Texas Department of Criminal Justice
- b. James McKee
Warden
O.L Luther Unit (P2)
- c. Texas Department of Criminal Justice
c/o Bryan Collier
TDCJ Executive Director

Service was perfected to the above Defendants through their Attorneys of Record for Service:

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Austin, TX 78701

Leah Jean O'Leary

Office of the Attorney General
Law Enforcement Defense Division
P.O. Box 12548 Capital Station
Austin, TX 78711-2548

Example 2-2

CERTIFICATE OF MAILING

Whereby their signatures below, Plaintiffs do hereby certify/declare that the foregoing document was delivered to the United States Post Office for processing (U.S. First Class postage, pre-paid).

Pursuant to Fed. R. App. P. Rule 25 (a)(2)(A)(iii), "Mailbox Rule," Pro se documents filed at the time they are placed in the institutional mailing system for processing.

INMATE DECLARATION

We, the Plaintiffs listed below, being over 18 years of age, of sound mind, capable of making this declaration due to the facts that we: suffer from and/or experience(d) one or more of the conditions described; attended consultations with qualified medical and other professionals; having been trained by medical personnel to recognize and treat complications due to illness/heat/cold; having studied materials listed under Fed. R. Civ. P. Rule 902; through our personal observations; and due to belief and empirical knowledge that the facts stated above; pursuant to 28 U.S.C. § 1746, do hereby declare under penalty of perjury that the foregoing is true and correct from personal knowledge.

Executed on _____, 20__

Example 3-1

JOHN SAIN, Pro Se
TDCJ ID# 01373168
O.L. Luther Unit (P2)
1800 Luther Dr.
Navasota, TX 77868-4714

EUGENE BOSTON, Pro Se
TDCJ ID# 02075115
O.L. Luther Unit (P2)
1800 Luther Dr.
Navasota, TX 77868-4714

SALVADOR CAPUCHINO, Pro Se
TDCJ ID# 01675667
O.L. Luther Unit (P2)
1800 Luther Dr.
Navasota, TX 77868-4714

DAVID CUMMINGS, Pro Se
TDCJ ID# 02153663
O.L. Luther Unit (P2)
1800 Luther Dr.
Navasota, TX 77868-4714

PHILLIP GULLETT, Pro Se
TDCJ ID# 01672020
O.L. Luther Unit (P2)
1800 Luther Dr.
Navasota, TX 77868-4714

THYEE MCGRUDER, Pro Se
TDCJ ID# 02158413
O.L. Luther Unit (P2)
1800 Luther Dr.
Navasota, TX 77868-4714

Not Available For Signature

JERRY SMITH, Pro Se
TDCJ ID# 02171841
O.L. Luther Unit (P2)
1800 Luther Dr.
Navasota, TX 77868-4714

Example 3-2

JESSE SNEARLY, Pro Se
TDCJ ID# 02042412
O.L. Luther Unit (P2)
1800 Luther Dr.
Navasota, TX 77868-4714

DAVID WILSON, Pro Se
TDCJ ID# 01648044
O.L. Luther Unit (P2)
1800 Luther Dr.
Navasota, TX 77868-4714

Example 4

SWORN AFFIDAVIT OF _____ TDCJ ID # _____

I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this declaration are within my personal knowledge and are true and correct. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Signature: _____

Dated: _____

John Smith 01373168

1/2/18

2900 W. 14th St

Norman TX 77408-4537

United States Courts
Southern District of Texas
FILED

DEC 26 2019

David J. Badley, Clerk of Court



U.S.
P.
H.

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SPECIAL MAIL